IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.145 OF 2006

Mr.Chandrashekhar,)
Age: 58 years, Occ.Architect,)
Co-convenor (Slum Rehabilitation)
Cell), National Alliance of)
People's Movement, Residing)
at C-8, Ramanika, Plot 26,)
Daulat Nagar, Santacruz (West),)
Mumbai-400 054.) ...PETITIONER.

Versus

1. The State of Maharashtra,)
through the Additional)
Chief Secretary, Home)
Department, (Preventive)
Detention))
and)
The Principal Secretary,)
Mantralaya, Mumbai.)
)
2. Shri A.N.Roy,)
Commissioner of Police,)
Brihan Mumbai.)

3. The Superintendent of)
Jail, Thane Central)
Prison, Thane.) ..RESPONDENTS.

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Mr.Nitin Pradhan, Senior Counsel with S.D.Khot, Advocate for the Petitioner.
Mrs. A.S.Pai, APP for the State.

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CORAM : D.G.DESHPANDE &
SMT.V.K.TAHILRAMANI, JJ.
DATED : MAY 03, 2006.

ORAL JUDGMENT (PER TAHILRAMANI,J.)

1. Through this Petition, the petitioner has impugned the order of detention dated 29th December, 2005, whereby the detenu-Rajkumar Kishanlal Awasti came

to be detained by respondent No.2, the Commissioner of Police, Greater Bombay. By the said order, the detenu came to be detained under Sub-Section (2) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 (hereinafter referred to as the MPDA Act).

2. A perusal of the grounds of detention would show that the impugned detention order is founded on two C.Rs. i.e. C.R.No.571 of 2005 and C.R.No.313 of 2005, three incamera statements and one application addressed to the Deputy Commissioner of Police, Zone-VIII. For the purpose of deciding the present Petition, we do not feel it necessary to go into the details of the said C.Rs. or the incidents referred by incamera witnesses. Hence, the said incidents are not narrated here.

3. We have heard Mr.Nitin Pradhan, learned Counsel for the petitioner and Mrs.Pai learned APP for the State. Although, in this Writ Petition many grounds have been pleaded, Mr.Pradhan has only pressed two grounds i.e. additional Ground Nos.(a) & (b), which are briefly stated as under :

That the detenu was arrested in C.R.No.571 of 2005 on 14.10.2005, and he was produced before the learned Metropolitan Magistrate on 15.10.2005. At that time, the detenu made a specific allegation before the Magistrate that he was falsely implicated and this aspect should be investigated into. The detenu had preferred an application to the said effect. The learned Magistrate on that very day i.e. on 15.10.2005 passed an order directing DCP to investigate into the said allegation made by the detenu and to file a report. The matter came to be adjourned to 21.10.2005. Again on 21.10.2005, a Petition came to be submitted on behalf of the Detenu by several persons. The Magistrate again passed an order that the allegations of false implication be investigated into and report was called for. It is the case of the detenu that this aspect of false implication of the detenu in C.R.No.571 of 2005, his application stating that he was falsely implicated and the order of the Court that the matter should be investigated into, and the report being called for after directing investigation by an officer of the level of the DCP, was not taken into

consideration by the detaining authority before issuing the order of detention. Hence the detention order is vitiated.

4. We have perused the grounds of detention and we find that there is no awareness reflected therein about such an application being preferred by the detenu and the learned Magistrate directing the officer of the level of Deputy Commissioner of Police to investigate into the said allegations and to submit a report.

5. From the facts stated in the application preferred by the detenu, the learned Magistrate thought the allegations therein to be serious enough to warrant an investigation into the aspect of false implication by an officer of the level of DCP. We are of the opinion that this particular document in the facts and circumstances of the present case is a vital and material document and it affects the very basis of the truth of the allegations in the complaint relating to C.R.No.571 of 2005. In such case, the detaining authority ought to have reflected his awareness in the grounds of detention in respect of the application preferred by the detenu and more especially the order of the Magistrate passed thereon.

6. We may make it clear that every accused says that he is innocent and he is falsely implicated. Hence, if the detaining authority did not reflect his awareness in respect of such an application, it would not vitiate the order of detention. However, in the present case the matter does not stop there. On the application of the detenu, the learned Magistrate directed investigation of the allegations made by the detenu of false implication, by an officer of the level of Deputy Commissioner of Police. It is only when the facts and circumstances were serious and grave enough that the learned Magistrate would pass such an order. In such case, the order of the learned Magistrate on the application of the detenu is a relevant and vital material and in our opinion the detaining authority has not taken this aspect into consideration. From the grounds of detention we find that no awareness has been reflected by the detaining authority regarding this vital material. We do not find any material to show that the detaining authority had actually considered this vital document i.e. the order of the Magistrate.

7. In this view of the matter, we are of the opinion that the detaining authority has not taken into

consideration the said vital material and hence the subjective satisfaction of the detaining authority, while issuing the order of detention, would be vitiated on this count.

8. In the result Petition is allowed. Rule is made absolute.

9. C.C. expedited

(D.G.DESHPANDE,J.)

(SMT.V.K.TAHILRAMANI,J.)